



Federal Communications Commission
Washington, D.C. 20554

May 19, 2011

DA 11-916

Small Entity Compliance Guide

Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers

FCC 10-59
WT Docket No. 05-265

This Guide is prepared in accordance with the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the new rules adopted in the above-referenced FCC rulemaking docket(s). This Guide is not intended to replace the rules and, therefore, final authority rests solely with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This Guide may, perhaps, not apply in a particular situation based upon the circumstances, and the FCC retains the discretion to adopt approaches on a case-by-case basis that may differ from this Guide, where appropriate. Any decisions regarding a particular small entity will be based on the statute and regulations.

In any civil or administrative action against a small entity for a violation of rules, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation; the FCC will consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or to clarify or update the text of the Guide. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

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COMPLIANCE REQUIREMENTS

Objectives of the Proceeding

The Commission has found that wireless consumers have a reasonable expectation of receiving seamless continuous nationwide commercial mobile telephony services through roaming. In the roaming proceeding, WT Docket No. 05-265, with regard to commercial services, the Commission seeks to facilitate the provision of wireless services to consumers, especially those in rural areas. In the *2007 Report and Order and Further Notice of Proposed Rulemaking*, the Commission clarified that automatic roaming is a common carrier obligation for commercial mobile radio service (CMRS) carriers, requiring them to provide roaming services to other CMRS carriers upon reasonable request and on a just, reasonable, and non-discriminatory basis. The automatic roaming obligation applies to real-time, two-way switched voice or data services provided by CMRS carriers that are interconnected with the public switched network, and push-to-talk and text-messaging services.

More recently, the Commission modified the 2007 roaming rule in April 2010 and eliminated the home roaming exclusion. Under the revised roaming rule, upon a reasonable request, CMRS carriers are obligated to provide voice, text messaging, and push-to-talk roaming to any technologically compatible, facilities-based CMRS carrier on reasonable and not unreasonably discriminatory terms and conditions, pursuant to Sections 201 and 202 of the Communications Act. This new framework for roaming will encourage carriers of all sizes to reach reasonable roaming agreements for any area, while also encouraging these carriers to continue investing in the coverage and capacity of their networks.

Important Definitions

Automatic roaming. With automatic roaming, under a pre-existing contractual agreement between a subscriber's requesting (home) carrier and a host carrier, a roaming subscriber is able to originate or terminate a call in the host carrier's service area without taking any special actions.

Commercial mobile radio service (CMRS) is a mobile service that is: (1) provided for profit (*i.e.*, with the intent of receiving compensation or monetary gain), an interconnected service, and available to the public or to such classes of eligible users as to be effectively available to a substantial portion of the public; or (2) the functional equivalent of such a mobile service (47 C.F.R. § 20.3). (*See also* 47 U.S.C. § 332(d)(1) defining "commercial mobile service" as "any mobile service...that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public.")

Host carrier. For automatic roaming, the host carrier is a facilities-based CMRS carrier on whose system another carrier's subscriber roams. A facilities-based CMRS carrier may, on behalf of its subscribers, request automatic roaming service from a host carrier. (47 C.F.R. § 20.3).

Manual roaming occurs when a subscriber must establish a relationship with the host carrier on whose system he or she wants to roam in order to make a call. Typically, the roaming subscriber accomplishes this in the course of attempting to originate a call by giving a valid credit card number to the carrier providing the roaming service (47 C.F.R. § 20.3).

Rules That the Commission Amended

- The Commission clarified that automatic roaming is a common carrier obligation for CMRS carriers, subject to Sections 201 and 202 of the Communications Act. Under the revised roaming rule, upon a reasonable request, CMRS carriers are obligated to provide voice, text messaging, and push-to-talk roaming to any technologically compatible, facilities-based CMRS carrier on reasonable and not unreasonably discriminatory terms and conditions. (47 C.F.R. § 20.12(d)).
- The automatic roaming obligation extends to CMRS carriers that offer real-time, two-way switched voice or data service that is interconnected with the public switched network and utilize an in-network switching facility that enables the carrier to re-use frequencies and accomplish seamless hand-offs of subscriber calls. The obligation is also applicable to the provision of push-to-talk and text-messaging services by CMRS carriers (47 C.F.R. § 20.12(a)(2)).

Steps a Small Entity Must Take to Invoke its Rights Under the Automatic Roaming Rule

To the extent that an entity seeks to invoke its rights under the Commission's automatic roaming obligation, the requesting carrier:

- Must be a CMRS carrier.
- Must make a reasonable request to the would-be host carrier for automatic roaming service. The Commission will presume, in the first instance, that a request for automatic roaming of covered services by a technologically compatible carrier is reasonable under Sections 332(c), 201 and 202, regardless of whether the request includes areas where the requesting carrier holds spectrum rights. A reasonable request may only involve real-time, two-way switched voice or data services that are interconnected with the public switched network and utilize an in-network switching facility that enables the carrier to re-use frequencies and accomplish seamless hand-offs of subscriber calls (*See also* 47 U.S.C. §§ 153 and 332; 47 C.F.R. § 20.3).

When such a request is made, a would-be host CMRS carrier has a duty to respond promptly to the request and avoid actions that unduly delay or stonewall the course of negotiations regarding that request. Such behavior would likely support a finding of a breach of the would-be host carrier's automatic roaming obligations. (Host carriers might also be small entities.)

- As relates to push-to-talk and/or text messaging service(s), must offer such service(s) to its subscribers on its own network; such roaming must be technically feasible; and any changes to the would-be host carrier's network that are necessary to accommodate the push-to-talk and/or text messaging roaming request(s) must be economically reasonable.

Complaints against CMRS carriers regarding the automatic roaming service obligation may be filed with the Commission pursuant to Section 208 of the Communications Act (47 U.S.C. § 208). The Commission reaffirmed its intent to address such roaming disputes expeditiously. Whether or not the appropriate procedural vehicle is a complaint under Section 208 of the Act or a petition for declaratory ruling under Section 1.2 of the Commission's rules, the Commission will resolve such complaints on a case-by-case basis depending on the circumstances of each case. In deciding such complaints, the Commission will determine on a case-by-case basis whether requests are reasonable and whether the activity complained of is unjust and unreasonable based on the totality of the circumstances of the particular case.

Recordkeeping and Other Compliance Requirements

The only reporting or recordkeeping costs to be incurred are administrative costs to ensure that an entity's practices are in compliance with the automatic roaming rule. The additional compliance requirement is that providers must provide automatic roaming to any requesting technologically compatible carrier on reasonable and non-discriminatory terms and conditions.

Links

- Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services, WT Docket No. 05-265, *Order on Reconsideration and Second Further Notice of Proposed Rulemaking*, 75 FR 22338-22352 (2010), 75 FR 22263-22276 (2010)

<http://edocket.access.gpo.gov/2010/pdf/2010-9832.pdf>

<http://edocket.access.gpo.gov/2010/pdf/2010-9831.pdf>

- News Release, *FCC Takes Steps to Promote Nationwide Mobile Connectivity* (rel. April 21, 2010).

http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-297661A1.pdf

- Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, WT Docket No. 05-265, *Report and Order and Further Notice of Proposed Rulemaking*, 22 FCC Rcd 15817 (2007).

http://fjallfoss.fcc.gov/edocs_public/attachmatch/FCC-07-143A1.pdf

- Added/Revised Part 20 Rules

http://frwebgate.access.gpo.gov/cgi-bin/getpage.cgi?dbname=2007_register&position=all&page=50073